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10/597,746

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Joshua Dick

URNEXIUS

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37617 7590 09/19/2011  
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EXAMINER

BLAN, NICOLE R

ART UNIT

PAPER NUMBER

1714

MAIL DATE

DELIVERY MODE

09/19/2011

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/597,746	<b>Applicant(s)</b> DICK ET AL.	
	<b>Examiner</b> NICOLE BLAN	<b>Art Unit</b> 1714	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2011.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on \_\_\_\_; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 5) ☒ Claim(s) 1,2 and 5-20 is/are pending in the application.
- 5a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 6) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 7) ☒ Claim(s) 1, 2 and 5-20 is/are rejected.
- 8) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 9) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____.                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____.  | 6) <input type="checkbox"/> Other: ____.                          |

### **DETAILED ACTION**

1. The amendments to claims 1, 2, 9 and 15 in the response filed July 11, 2011 have been acknowledged.
2. In view of the amendment to claim 2, the previous objection to the claim has been withdrawn.

### ***Response to Arguments***

3. Applicant's arguments filed July 11, 2011 have been fully considered but they are not persuasive.
4. In response to applicant's argument regarding Gabby, the examiner does not find it persuasive. Instant claims 9-13 are drawn to the product and **not** to the method of using the product. See *In re Fitzgerald* (205 USPQ 594). (CAFC) or *In re Spada* 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990) and MPEP 2112.01 [R3]. Gabby teaches a tablet made from a food-safe coarse material as well as a binding agent which is the exact product instantly claimed. Thus, the tablet of '217 is capable of performing the intended use as recited in the claim; therefore, it meets the claimed limitations.
5. In response to applicant's argument regarding Kramer, the examiner does not find it persuasive. Kramer teaches a tablet press such that the two portions have complementary shapes in order to form a tablet upon application of a predetermined force. Since all the structures are found in the prior art, it is fully capable of performing the functions as recited in claims 16-20. The tablet press of '427 is fully capable of pressing the first and second halves of the mold

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together at a predetermined force for combining food-safe materials into an object corresponding to the size and shape for most common type of product that the grinding machine is capable of grinding (tablet can be grinded by the grinding machine); and the pressed object made by the tablet press of '427 is also fully capable of being purged through the grinding machine without the use of liquid. Regarding the recitations "for a grinding machine having one or more burrs soiled by oils and residue" and "food safe materials for placing into the mold portions, wherein the food safe materials differ from the material that caused the soiling of the burrs to enable the food safe materials to remove the oils and residue", these recitations are a statement of intended use which does not patentably distinguish over '427 since '427 meets all the structural elements of the claim(s) and is capable of making a cleaner for a grinding machine having one or more burrs soiled by oils and residue and that food safe materials can be placed into the mold portions, wherein the food safe materials differ from the material that caused the soiling of the burrs to enable the food safe materials to remove the oils and residue if so desired. See MPEP 2114.

Instant claims 15-20 are drawn to the apparatus not to the method of using the product. Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). "[A]pparatus claims cover what a device is, not what a device does." *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990). It is fundamental that an apparatus claim defines the structure of the invention and not how the structure is used in a process, or what materials the structure houses in carrying out the process. *Ex parte Masham*, 2 USPQ2d 1647, 1648 (BPAI 1987). See also *In re Yanush*, 477 F.2d 958, 959, 177 USPQ

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705,706 (CCPA 1973); *In re Finsterwalder*, 436 F.2d 1028, 1032, 168 USPQ 530, 534 (CCPA 1971); *In re Casey*, 370 F.2d 576, 580, 152 USPQ 235,238 (CCPA 1967).

6. In response to applicant's argument regarding Levin in view of '383, the examiner agrees. However, the limitation is met in view of the new rejection described below. Levin and '383 do not teach that the cleaning material differs from the material that caused the soiling of the burrs. However, McGraw teaches that coffee grinders can be cleaned using rice [page 23]. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use rice as taught by McGraw to clean the coffee grinder of Levin because McGraw teaches rice is sufficient at cleaning coffee grinders. Thus, the cleaning material differs from that ground by the grinder.

They do not explicitly teach that the rice is sufficient to clean the soiled burr by removing oils and residue without impacting the flavor of any material subsequently being inserted into the grinding machine. The examiner takes official notice that it is common knowledge to one of ordinary skill in the art of cleaning that rice is known to absorb flavor. Thus, it will not impact future flavoring because it will be removing the oil residues and grinding residue from the grinder.

The amount of the rice apportioned to clean is a result effective variable. The amount required could be dependent upon many factors such as the size of the grinder to be cleaned and the quantity of the contaminants to be removed so that resources can be conserved and production costs can be kept at a minimum so that extra material is not being wasted. Without evidence of unexpected results, it would have been obvious to one of ordinary skill in the art at

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the time of the invention to determine the appropriate amount of the cleaning material based on the contaminants to be removed for the predictable results of cleaning a grinder, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**8. Claims 9, 10, 12 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Gabby et al. (U.S. Patent 4,328,217, hereinafter '217).**

Claims 9, 10, 12 and 13: '217 teaches a tablet comprising bran, which is preferred as wheat [reads on "a food safe material" and claims 12-13; col. 2, lines 63-67] which inherently contains a predetermined amount of the food-safe material, and a binding agent [col. 2, lines 21-25]. Note that the tablet possesses a color [reads on claim 10].

The product is identical to the one claimed; therefore, the product of '217 can be purged without the use of liquid. Claims 9-13 are drawn to the product and **not** to the method of using the product. See *In re Fitzgerald* (205 USPQ 594). (CAFC) or *In re Spada* 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990) and MPEP 2112.01 [R3]. Thus, the tablet of '217 is capable of performing the intended use as recited in the claim; therefore, it meets the claimed limitations.

**9. Claims 15-17 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Kramer (U.S. Patent 5,462,427, hereinafter '427).**

Claims 15-17 and 20: '427 teaches a tablet press comprising a mold having a first portion having a pre-determined size; a second portion complementary to the first determined size and shape [Fig. 1]; and a pressing machine [(10), Fig. 1] for pressing the first and second halves of the mold together at a predetermined force.

Since all the structures are found in the prior art, it is fully capable of performing the functions as recited in claims 16-17 and 20. The tablet press of '427 is fully capable of pressing the first and second halves of the mold together at a predetermined force for combining food-safe materials into an object corresponding to the size and shape for most common type of product that the grinding machine is capable of grinding (tablet can be grinded by the grinding machine); and the pressed object made by the tablet press of '427 is also fully capable of being purged through the grinding machine without the use of liquid.

Regarding the recitations “for a grinding machine having one or more burrs soiled by oils and residue” and “food safe materials for placing into the mold portions, wherein the food safe materials differ from the material that caused the soiling of the burrs to enable the food safe materials to remove the oils and residue”, these recitations are a statement of intended use which does not patentably distinguish over '427 since '427 meets all the structural elements of the claim(s) and is capable of making a cleaner for a grinding machine having one or more burrs soiled by oils and residue and that food safe materials can be placed into the mold portions, wherein the food safe materials differ from the material that caused the soiling of the burrs to enable the food safe materials to remove the oils and residue if so desired. See MPEP 2114.

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Applicants' attention is drawn to the fact that claims 15-17 and 20 are drawn to the apparatus **not** to the method of using the product. Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). "[A]pparatus claims cover what a device is, not what a device does." *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990). It is fundamental that an apparatus claim defines the structure of the invention and not how the structure is used in a process, or what materials the structure houses in carrying out the process. *Ex parte Masham*, 2 USPQ2d 1647, 1648 (BPAI 1987). See also *In re Yanush*, 477 F.2d 958, 959, 177 USPQ 705,706 (CCPA 1973); *In re Finsterwalder*, 436 F.2d 1028, 1032, 168 USPQ 530, 534 (CCPA 1971); *In re Casey*, 370 F.2d 576, 580, 152 USPQ 235,238 (CCPA 1967).

### ***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.



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4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**12. Claims 1, 2 and 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Tea & Coffee Trade Journal (hereinafter Levin) in view of Ford et al. (U.S. Patent 5,865,383, hereinafter '383), and further in view of Mrs. Fixit (hereinafter McGraw).**

Claims 1 and 2: Levin teaches one can clean their coffee grinder after grinding strong flavored coffees by grinding a non-descript regular coffee [page 17]. Levin implicitly teaches cleaning a grinding machine having one or soiled burrs [because it grinds the coffee] by apportioning a predetermined amount of non-descript regular coffee to be inserted into the grinding machine to be ground in order to remove the stronger flavored coffee residues. Levin inherently teaches that the grinder is soiled with oils and grinding residue because it grinds coffee with inherently contains oil and the coffee residue will remain on the grinder. Levin does not explicitly teach purging the ground cleaning material and soil from the grinder, but it is notoriously well known in the art of grinding coffee that one must remove the ground product from the machine as taught by '383 [Fig. 1 and 2; col. 5, lines 38-40]. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to purge the ground cleaning material as taught by '383 in the method of Levin because '383 discloses that ground coffee exits the machine (reads on "purging").

Levin and '383 do not teach that the cleaning material differs from the material that caused the soiling of the burrs. However, McGraw teaches that coffee grinders can be cleaned using rice [page 23]. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use rice as taught by McGraw to clean the coffee grinder of

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Levin because McGraw teaches rice is sufficient at cleaning coffee grinders. Thus, the cleaning material differs from that ground by the grinder.

They do not explicitly teach that the rice is sufficient to clean the soiled burr by removing oils and residue without impacting the flavor of any material subsequently being inserted into the grinding machine. The examiner takes official notice that it is common knowledge to one of ordinary skill in the art of cleaning that rice is known to absorb flavor. Thus, it will not impact future flavoring because it will be removing the oil residues and grinding residue from the grinder.

The amount of the rice apportioned to clean is a result effective variable. The amount required could be dependent upon many factors such as the size of the grinder to be cleaned and the quantity of the contaminants to be removed so that resources can be conserved and production costs can be kept at a minimum so that extra material is not being wasted. Without evidence of unexpected results, it would have been obvious to one of ordinary skill in the art at the time of the invention to determine the appropriate amount of the cleaning material based on the contaminants to be removed for the predictable results of cleaning a grinder, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

Claims 5 and 6: Levin, '383 and McGraw teach the limitations of claim 1 above. They do not explicitly teach that the shape of the cleaning material is sized to correspond to the shape and size of the most common type of product that the grinding machine grinds, such as a coffee bean shape. As discussed above, McGraw teaches that rice can be used to clean a coffee grinder.

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Rice and coffee are both elongated and cylindrical in shape. Therefore, the cleaning material is a tablet that is shaped and sized to correspond to the material that the grinding machine grinds, namely a coffee bean shape.

Claim 7: Levin, '383 and McGraw teach the limitations of claim 1 above. As discussed above, McGraw teaches using rice to clean a coffee grinder. McGraw does not explicitly teach what type of rice can be used. However, it would have been obvious to one of ordinary skill in the art to use white rice [reads on "cleaning material is colored"] in order to be able to have a visual indicator as to when the grinder is sufficiently cleaned because upon completion of cleaning the grinder, the ground rice will be white in color versus a mix of white and black/brown as it was when the cleaning initially started because the rice is removing the coffee residues.

**13. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over the Tea & Coffee Trade Journal (hereinafter Levin) in view of Ford et al. (U.S. Patent 5,865,383, hereinafter '383), in view of Mrs. Fixit (hereinafter McGraw), and further in view of Hollander (U.S. PGPub 2005/0026798, hereinafter '798).**

Claim 8: Levin, '383 and McGraw teach the limitations of claim 5 above. They do not teach that the cleaning material comprises a binding material. However, '798 teaches a method of cleaning a grinding machine by using a pre-pressed tablet formed from biodegradable components to clean a grinder and that tablet forms of cleaning agents include binders [page 1, paragraph 5; page 3, paragraph 27]. It would have been obvious to one of ordinary skill in the art

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to use a binder with additional ingredients in order to form a pressed tablet as taught by '798 in order to clean the grinder of Levin because '798 illustrates a tablet is effective at cleaning grinders.

**14. Claims 9 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takada et al. (U.S. PGPub 2002/0183261, hereinafter '261) in view of Hollander (U.S. PGPub 2005/0026798, hereinafter '798).**

Claims 9 and 14: '261 teaches a tablet comprising egg shell [read as inorganic food safe coarse materials; paragraph 14]. '261 remains silent about a binding material. However, '798 teaches a pre-pressed tablet formed from food-safe components to clean a grinder and that tablet forms of cleaning agents include binders [page 1, paragraph 5; page 3, paragraph 27]. It would have been obvious to one of ordinary skill in the art to use a binder with additional ingredients in order to form a pressed tablet as taught by '798 in order to form a tablet because '798 illustrates binders effectively form a tablet.

The product is the same as the one claimed; therefore, the product of modified '261 can be purged without the use of liquid. Claims 9 and 14 are drawn to the product and **not** to the method of using the product. See *In re Fitzgerald* (205 USPQ 594). (CAFC) or *In re Spada* 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990) and MPEP 2112.01 [R3]. Thus, the tablet of modified '261 is capable of performing the intended use as recited in the claim; therefore, it meets the claimed limitations.

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**15. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gabby et al. (U.S. Patent 4,328,217, hereinafter '217).**

Claim 11: '217 teaches the limitations of claim 9 above. '217 teaches a tablet, but it does not explicitly teach that the table is sized and shaped like a coffee bean. However, it would have been an obvious matter of design choice to shape the tablet in a particular shaped based on its application, since such a modification would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordianry skill in the art.

**16. Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kramer (U.S. Patent 5,462,427, hereinafter '427).**

Claims 18 and 19: '427 teaches forming a tablet by pressing the first and second halves of the mold together at a predetermined force, but it does not explicitly teach that the first and second portions of the mold are sized and shaped like a coffee bean. However, it would have been an obvious matter of design choice to shape the tablet in a particular shaped based on its application, since such a modification would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordianry skill in the art.

***Conclusion***

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NICOLE BLAN whose telephone number is (571)270-1838. The examiner can normally be reached on Monday - Thursday 8-5 and alternating Fridays 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Kornakov can be reached on 571-272-1303. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nicole Blan/

Examiner, Art Unit 1714

/Michael Kornakov/

Supervisory Patent Examiner, Art Unit 1714